

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: <u>05/31/2022</u>

----- X
RAYMOND SWAINSON, :
: Plaintiff, :
: :
- v - : Defendants. :
: :
FIRSTMARK SERVICES et al, :
: :
----- X

21-cv-5380 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

Plaintiff has filed a letter in response to the Court's order to show cause at Dkt. No. 21. *See* Dkt. No. 22. In that letter, Plaintiff states that he has confirmed that Defendants Firstmark Services ("Firstmark") and TransUnion, LLC ("TransUnion") were timely served in state court but fails to provide evidence of that assertion or state whether service was perfected before the notice of removal was filed on June 17, 2021, Dkt. No. 1. It is hereby ORDERED that, by **June 22, 2022**, Plaintiff shall submit the referenced affidavits of service to this Court and clarify whether service was perfected prior to the notice of removal.

Plaintiff also requests three weeks to serve Defendants Firstmark and TransUnion in the federal action because he was unaware that he was supposed to serve those parties. Dkt. No. 22. Under Federal Rule of Civil Procedure 4(m), "[i]f a defendant is not served within 90 days after the complaint is filed, the court . . . must dismiss the action without prejudice against the defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m). "[I]f the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period." *Id.* In addition, "[c]ourts have discretion to grant equitable relief through extensions for service in the absence of good cause." *Kogan v. Facebook, Inc.*, 334 F.R.D. 393, 404 (S.D.N.Y. 2020); *see also Zapata v. City of New York*, 502 F.3d 192, 197 (2d Cir. 2007). When determining whether to grant such an extension, relevant considerations include: "(1) whether any applicable statutes of limitations would bar the action once refiled; (2) whether the defendant had actual notice of the claims asserted in the complaint; (3) whether defendant attempted to conceal the defect in service; and (4) whether defendant would be prejudiced by extending plaintiff's time for service." *Kogan*, 334 F.R.D. at 404 (quoting *DeLuca v. AccessIT Grp., Inc.*, 695 F. Supp. 2d 54, 66 (S.D.N.Y. 2010)). "These factors are not dispositive," *Barbosa v. City of New York*, 2018 WL 4625620, at *3 (S.D.N.Y. Sept. 26, 2018), and "[c]ourts may take other equitable considerations into account," *Kogan*, 334 F.R.D. at 404 (citation omitted).

Plaintiff's request is granted. Plaintiff has failed to show good cause because Plaintiff

has not established that there were “circumstances beyond [his] control” that caused the lack of timely service and because “[a]n attorney’s ignorance of the rules, inadvertence, neglect, or mistake do not constitute good cause.” *Feingold v. Hankin*, 269 F. Supp. 2d 268, 276 (S.D.N.Y. 2003). The Court, however, will grant Plaintiff equitable relief, particularly because there is some indication on the docket that Defendant TransUnion had actual notice of the claims asserted and because of Plaintiff’s pro se status. *See* Dkt. No. 14 at 2 (stating that counsel for Defendant Experian Information Solutions, Inc. spoke with counsel for TransUnion about the action).

On the assumption that service of Defendants Firstmark and TransUnion was not perfected prior to removal, Plaintiff shall have until **June 22, 2022** to effect service and to file proof of service with the Court.

Plaintiff is also reminded that there is a legal clinic in this District that provides assistance, free of charge, to people who are parties in civil cases and do not have lawyers. The clinic is run by a private organization called the New York Legal Assistance Group (“NYLAG”); it is not part of, or run by, the Court. An unrepresented party can contact NYLAG via <https://nylag.org/gethelp> or by calling (212) 659-6190.

SO ORDERED.

Dated: May 31, 2022
New York, New York



LEWIS J. LIMAN
United States District Judge